

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES F. PETERS, as Trustee of James F. Peters  
Trust, and ELEANOR PETERS, as Trustee of  
Eleanor Peters Trust,

UNPUBLISHED  
April 19, 2007

Plaintiffs-Appellants,

v

No. 266862  
Oakland Circuit Court  
LC No. 2003-052119-CK

KAYS ZAIR,

Defendant-Appellee,

and

METROPOLITAN TITLE COMPANY,

Defendant.

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Before: Donofrio, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant Kays Zair's request for case evaluation sanctions in this action alleging breach of contract and fraud/misrepresentation. The trial court granted summary disposition in favor of defendant after finding that defendant was not individually liable to plaintiffs because he was not a party to the contract. We affirm the court's decision to award sanctions, but remand to allow the trial court to conduct a hearing regarding the reasonableness and amount of defendant's requested attorney fees.

The purpose of the case evaluation sanctions rule is to encourage settlement and deter protracted litigation by placing the burden of litigation costs on the rejecting party who caused the case to proceed toward trial. *Rohl v Leone*, 258 Mich App 72, 75; 669 NW2d 579 (2003). "[A] party who rejects a case-evaluation award is generally subject to sanctions if he fails to improve his position at trial." *Campbell v Sullins*, 257 Mich App 179, 198; 667 NW2d 887 (2003). If the party requesting sanctions meets the requirements set forth in the court rule, the party who rejected case evaluation "must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party."

Defendants accepted and plaintiffs rejected the case evaluation award of \$6,250 in favor of plaintiffs. There is no dispute that a less favorable judgment was entered against plaintiffs. Before the court imposed the case evaluation sanctions at issue, plaintiffs moved the court to allow them to conduct discovery to “determine the facts.” Plaintiffs argued that discovery was necessary to determine “how much time was spent” and “who did the work at what rate.” The trial court denied plaintiffs’ request for discovery and for an evidentiary hearing. The court found that plaintiffs “provided no authority” to support their position that they were entitled to conduct discovery regarding the fees. The court also found that:

there’s really been no challenge with regard to the reasonability based on the hours or time or complexity or sophistication of the work. There has been a blanket challenge

The court awarded defendant case evaluation sanctions of \$32,563.60 pursuant to MCR 2.403(O)(1).

Plaintiffs argue that the trial court erred when it denied their request to conduct discovery and an evidentiary hearing regarding defendant’s alleged attorney fees. We review a trial court’s decision regarding discovery requests for an abuse of discretion. *In re Pott*, 234 Mich App 369, 373; 593 NW2d 685 (1999).

MCR 2.403(O) is trial-oriented. *Haliw v Sterling Hts*, 471 Mich 700, 707-708; 691 NW2d 753 (2005). A party who rejects an evaluation and fails to improve his position at trial must pay the opposing party’s “actual costs,” which include reasonable attorney fees. MCR 2.403(O)(1); *Elia v Hazen*, 242 Mich App 374, 378; 619 NW2d 1 (2000). A reasonable attorney fee must be based on a reasonable hourly or daily rate, as determined by the trial judge, for services necessitated by the rejection of the evaluation. MCR 2.403(O)(6)(b); *Campbell, supra* at 199. “A causal connection plainly exists between rejection and trial fees and costs.” *Haliw, supra* at 711 n 8.

Discovery is limited to matters that are relevant to the subject matter of a lawsuit, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party. *Cabrera v Ekema*, 265 Mich App 402, 407; 695 NW2d 78 (2005). Because plaintiffs provide no authority to support their position that they are entitled to conduct discovery regarding the attorney fees, they have failed to show that the court erred in denying their motion for discovery.

However, the trial court erred when it denied plaintiffs’ request for an evidentiary hearing on this matter. “When requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services.” *Reed v Reed*, 265 Mich App 131, 166; 693 NW2d 825 (2005). Although there are instances where the trial court does not need to hold an evidentiary hearing on matters involving attorney fees and costs, such as when the parties create a sufficient record to review the issue and the trial court fully explains the reasons for its decision, this is not the case here.

*Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). Invoices presented to the court showed the dates work was performed as well as a brief notation of the work performed, but did not indicate the amount of time spent nor the attorney who performed the work.<sup>1</sup> Each invoice concluded with a blanket “amount due.” The invoices were accompanied by the affidavit of attorney John A. Kullen, a partner in the firm that represented defendant, indicating the amount of time spent by each attorney and each attorney’s billable hourly rate. However, neither the invoices nor the affidavit reflected which attorney performed which service. The trial court did not specifically address the reasonableness of the hourly attorney fee rate or the number of attorney hours reasonably incurred in defense of the claim, nor did the court inquire into the services actually rendered by the attorneys. Accordingly, we conclude the trial court abused its discretion in determining sanctions because there is an insufficient record to permit meaningful review. *Elia, supra* at 377. We therefore remand to the trial court for a hearing regarding the reasonableness and amount of defendant’s requested attorney fees.

Plaintiffs also argue that the trial court abused its discretion because it failed to excuse them from paying case evaluation sanctions in the “interest of justice.” We disagree. We review a trial court’s decision whether to apply the “interest of justice” exception for an abuse of discretion. *Haliw v Sterling Heights (On Remand)*, 266 Mich App 444, 449-450; 702 NW2d 637 (2005).

A court may, pursuant to MCR 2.403(O)(11), deny an award of sanctions in the “interest of justice.” *Haliw (On Remand), supra* at 448. “If the trial court finds on the basis of all the facts and circumstances of a particular case and viewed in light of the purposes of MCR 2.403(O) that unusual circumstances exist, it may invoke the ‘interest of justice’ exception found in MCR 2.403 (O)(11).” *Id.* at 449. The court rules do not define the term “interest of justice.” *Haliw, supra* at 447. For that reason, to determine its meaning we must look to the language and purpose of the rule. *Id.* at 447. “The purpose of case evaluation sanctions is to shift the financial burden of trial onto ‘the party who demands a trial by rejecting a proposed [case evaluation] award.’” *Allard v State Farm Ins Co*, 271 Mich App 394, 398; 722 NW2d 268 (2006). An interest of justice exception has been found in circumstances where: (1) there is a case of first impression, (2) a party is indigent, (3) a party has engaged in misconduct, and (4) the law is unsettled and substantial damages are at issue. *Haliw (On Remand), supra* at 448.

Although plaintiffs argue that the trial court should have invoked the interest of justice exception and denied defendant’s motion for case evaluation sanctions, plaintiffs fail to show that the circumstances of this case are so unusual to compel the conclusion that the trial court abused its discretion by failing to invoke the interest of justice exception. *Haliw (On Remand), supra* at 450. Plaintiffs primarily argue that the trial court erred in this matter because it failed to articulate a specific reason for its refusal to invoke the interest of justice exception. Because MCR 2.403(O)(1) mandates that a party that rejects a mediation evaluation must be subjected to sanctions if that party does not improve its position at trial, the trial court need not state on the

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<sup>1</sup> For example, a typical notation stated, “8/24/04 Work on facilitation issues.”

record its reasons for enforcing the rule, but only its reason for applying the exception to the rule. *Haliw (On Remand)*, *supra* at 450; *Allard*, *supra* at 398. The facts clearly show that plaintiffs rejected the case evaluation and continued with this suit knowing that a procedural defect existed. Despite this knowledge, plaintiffs proceeded with the lawsuit causing both parties to incur additional litigation expenses and cost. Considering the language and purpose of MCR 2.403(O), and the facts surrounding this case, we conclude that the trial court did not abuse its discretion when it refused to invoke the interest of justice exception. *Haliw (On Remand)*, *supra* at 447.

Affirmed in part and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Pat M. Donofrio  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey